

# **Conflict of Interest Guidance for Project Managers and Consulting Firms**

## **Purpose**

The purpose of these guidelines is to assure the Department that its consultants have not entered into a contract where there may be a conflict of interest. These guidelines will also assure that the Department meets Federal requirements related to conflict of interest and will be consistent and fair in the actions taken when a conflict may appear.

## **FHWA Requirements**

23 CFR, Section 1.33, **Conflicts of Interest**, states that it is the responsibility of the State to enforce the following requirements of this section:

*“No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project.”*

*“No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State.”*

## **Department Responsibility**

Department personnel will review contract relationships and determine if a conflict of interest or the appearance of a conflict of interest exists. This document can be used to guide judgment but it not intended to cover every situation. The recommendation for action needs to be balanced between the benefits to the Department and the potential issues that can arise if a consultant or their affiliate\* is responsible to more than one party on the same project. (\*Note that “affiliate” is referring to a corporate entity linked to the consultant through common ownership.)

## **Defined Conflict of Interest or the Appearance of a Conflict of Interest.**

The following are examples of relationships that appear to be **or** are considered a conflict of interest. (Note, for all these situations, the services are provided on a particular project, not necessarily at the same time).

1. If the firm or their affiliate works for the Department and the construction contractor on the same project.
2. If the firm or their affiliate works for the Department and has assisted or represented an adversary interest in connection with the specific MDOT project.

**The following are examples where the Department will judge based on the circumstances whether a conflict of interest exists or not.**

1. If the firm or their affiliate is the municipal, township or county engineer on a project that involves that municipality, township or county.
2. If the firm or their affiliate provided or will provide services to a developer involving the same project.
3. If the firm or their affiliate works as a prime consultant for the Department and has also worked as a sub-consultant for another prime consultant on another phase of the same project..
4. The firm or their affiliate works for the Department on several phases of a project (i.e., Planning, Scoping, Early Preliminary Engineering, Design or Construction).
5. If the firm or their affiliate works for another interest, such as a contractor, on the same project.

**The following is an example of a relationship that is not considered to be a conflict or appear to be a conflict of interest.**

If the firm or their affiliate works for another interest, such as a contractor, but on separate projects.

**Actions to be taken if a conflict is identified.**

1. **During selection.** It is expected that firms or their affiliates, per the Vendor Selection Guidelines, will not submit proposals on projects where a conflict or the appearance of a conflict of interest exists. The Consultant is required to complete MDOT Form 5100I, Conflict Of Interest Statement, each time they submit a proposal. If it is noted by the Selection Team that a conflict or the appearance of or a conflict of interests exists, the selection team will provide such information to the Region Engineer or Division Administrator. The Region Engineer or Division Administrator will determine if there is a conflict of interest or not. If it is determined a conflict of interest does exist, the consultant will be given the opportunity to avoid, neutralize or otherwise mitigate the conflict. If the consultant cannot eliminate the conflict, the proposal will be considered ineligible for selection and the firm and their affiliate will be informed of the reason. If it is determined a conflict does not exist, the proposal will be scored and the selection will proceed as usual.
2. **After selection approval but prior to contract award.** The Project Manager will contact their Region Engineer or Division Administrator explaining the perceived conflict of interest. If the Region Engineer or Division Administrator concurs that a conflict exists, the consultant will be given the opportunity to avoid, neutralize or otherwise mitigate the conflict. If the consultant cannot eliminate the conflict, negotiations will be terminated and the next most qualified firm will be recommended for selection. A new selection approval will be processed through the Central Selection Review Team.

3. **During the performance of the service.** The Project Manager will contact their Region Engineer or Division Administrator explaining the perceived conflict of interest. If the Region Engineer or Division Administrator concurs that a conflict exists, based on the service, progress of work and potential risks, the Region Engineer or Division Administrator will recommend action. Possible actions are either termination of contract or continuing with the service with full disclosure required by the firm and their affiliates.

**The following is the contract language that is placed in all Indefinite Delivery of Services (IDS) Contract, and Non-Standard Contracts:**

The CONSULTANT and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the project, that would conflict or appear to conflict in any manner with the performance of the SERVICES under this Contract. "Affiliate" means a corporate entity linked to the CONSULTANT through common ownership. The CONSULTANT and its Affiliates agree not to provide any services to a construction contractor or any entity that may have an adversarial interest in a project for which it has provided services to the DEPARTMENT. The CONSULTANT and its Affiliates agree to disclose to the DEPARTMENT all other interests that the prime or sub consultants have or contemplate having during each phase of the project. The phases of the project include, but are not limited to, planning, scoping, early preliminary engineering, design, and construction. In all situations, the DEPARTMENT will decide if a conflict of interest exists. If the DEPARTMENT concludes that a conflict of interest exists, it will inform the CONSULTANT and its Affiliates. If the CONSULTANT and its Affiliates choose to retain the interest constituting the conflict, the DEPARTMENT may terminate the Contract for cause in accordance the provisions stated in this contract.

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